

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No. : 515/96

Date of Decision : 13 FEB-2001.

Sukh Sagar Bhaiya, son of Shri Yogendra Bhaiya, Extra Departmental Branch Postmaster, P.O.: Patajori Kajra, District Dumka, resident of village Patajori, P.O.: Patajori Kajra, P.S.: Jamtara, via. Jamtara, District : Dumka.

... APPLICANT.

By Advocate : Shri S.N.Tiwary.

vs.

1. The Union of India, through the Secretary, Govt. of India, Ministry of Communication, Department of Posts, New Delhi-110 001.-cum-The Director General, Department of Posts, Dak Bhavan, New Delhi-110 001.
2. The Chief Postmaster General, Bihar Circle, Patna-800 001.
3. The Postmaster General, South Bihar Region, Ranchi-834 002.
4. The Director of Postal Services, South Bihar Region, Ranchi-834 002.
5. The Senior Superintendent of Post Offices, Santhal Patgana Division, Dumka-814 101.
6. The Sub-Divisional Inspector (Postal), Jamtara Sub-Division, Jamtara, District Dumka-815 351.
7. The Sub-Divisional Inspector (Postal), Jamtara Sub-Division, Jamtara, District Dumka-815 351.

... RESPONDENTS.

By Advocate : Shri G.K.Agarwal,
Addl. Standing Counsel.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN
HON'BLE MR. L.R.K.PRASAD, MEMBER (ADMINISTRATIVE)

O R D E R

JUSTICE S.NARAYAN, V.C.:- The applicant, Sukh Sagar Bhaiya, having worked as Extra Departmental Branch Postmaster (for short, EDBPM) in Patajori Kajra EDBO, district Dumka, has prayed for quashing and setting aside two orders; One dated, 3rd October, 1996 (Annexure-A/4), issued by the respondent no.6, and the other dated, 8th October, 1996 (Annexure-A/5), issued by the respondent no.5, directing him to



handover cash, stamp and other valuables of Patajori Kajra B.O. It was further prayed for direction upon the respondents to appoint him on the said post on regular basis w.e.f. 13th August, 1978, with all consequential benefits.

2. The facts, not controverted, are that one Satya Narayan Bhaiyya, a permanent incumbent on the aforesaid post proceeded on leave after making over charge of the office of the EDBPM, Patajori Kajra EDBO, to the applicant as his substitute on 13th February, 1978. The said Satya Narayan Bhaiyya (Permanent incumbent) did not return to his duty and he died in the month of May, 1996. The applicant, thus, happened to function on the post discharging the duties thereof from 13th February, 1978, upto 3rd October, 1996, when a parallel Branch Office at Patajori Kajra was opened. The post was advertised through employment notice for being filled-in by regular course inviting applications latest by 30th January, 1996, through Employment Exchange and by 22nd January, 1996, directly. The applicant's son, Subodh Kumar Bhaiyya, was one of the applicants for the post as per applications forwarded through Employment Exchange, vide Annexure-R/1.

3. In context of the above facts, it was urged on behalf of the applicant that he, having served for a pretty long period, without any interruption by and on behalf of the respondents authority, had a right to be considered for regularisation. He further states that he was an adhoc appointee, approved by the department by natural implication and not an unauthorised person.



4. On the other side, the official respondents contended, inter-alia, that the applicant worked on the post as a Substitute on mutual adjustment with the permanent incumbent, Satya Narayan Bhaiyya, and further, that the arrangement of substitute done as such, had never been approved by any authority of the Postal Department. The substitute arrangement having been done dehors the Rules would never confer any right of being retained on the post and, furthermore, that the applicant not being a Matriculate had not even the requisite qualification for being considered on the post.

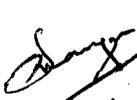
5. Thus, while determining the merit of the case, it was a point of paramount importance whether, the applicant had been selected under due process of law to hold the post ? Obviously, the answer was in negative. The materials on the record would depict that the applicant was made-over charge to hold the post by the permanent incumbent, Satya Narayan Bhaiyya, as a Substitute while he proceeded on leave w.e.f 13th February, 1978. It has been further established on the record that there was no positive approval given by the Postal authorities in regard to the arrangement of Substitute having been made. The instructions of Director General as issued from time to time did require that during leave every Extra Departmental Agents should arrange for his work being carried out by a substitute, who should be a person approved by the authority competent to sanction leave to him. Such approval was also required to be obtained in writing, vide such instructions contained in Swamy's Service Rules for ED Staff in regard to leave i.e. Rule 5 of the aforesaid Service Rules.

Swamy

What we find in the instant case that no such written approval had been granted in favour of the applicant. That being such, even in regard to the applicant's status as Substitute was without any sanction granted by the competent authority.

6. Apart from what has been seen above, it has to be always borne in mind that the applicant had not been selected or appointed to the post through any selection process. Therefore, his engagement as Substitute was, of course, dehors the Rules. In this view of the matter, it was difficult to accept the applicant's contention that by dint of his serving as Substitute for a long period, he would be entitled for any sort of regularisation on the post. It goes without saying that the mode of appointment by way of regularisation has been always deprecated and only when the adhoc appointment has been done through a regular selection process, could be considered for the purpose of regularisation in exceptional circumstance.

7. And above all, we find that the post-in-question had been duly advertised through Employment notice so as to fill-in the vacancy through regular course of selection. Admittedly, the applicant did not choose that recourse for his appointment on that post. This might be for the reason that he had not the requisite qualification of matriculation and as demonstrated by the transfer certificate (Annexure-R/2), submitted by the respondents, he had read upto Class-X only. So, the applicant did not hold even the academic qualification required for selection to the post-in-question.



8. For the reasons, aforesaid, the instant O.A. was devoid of merit and, accordingly, it is dismissed with no order as to costs.

skj

13-2-01
(L.R.K.PRASAD)
MEMBER(A)

Say 13-2-01
(S.NARAYAN)
VICE-CHAIRMAN